U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

FILE: [redacted] Office: Panama Date: SEP 5 2000

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 212(i) of the Immigration and Nationality Act, 8 U.S.C. 1182(i)

IN BEHALF OF APPLICANT:

[redacted]

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER, EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Officer in Charge, Panama, Panama, and the matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be rejected.

The applicant is a native and citizen of Colombia who was found to be inadmissible to the United States by a consular officer under § 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(6)(C)(i), for having attempted to procure admission into the United States by fraud or misrepresentation and for having been deported from the United States in June 1996.

The record reflects that, according to Service file A29 278 711, the applicant was present in the United States in February 1990 without a lawful admission or parole. She was ordered deported *in absentia* in 1990, breached a bond and failed to surrender for deportation on December 3, 1990.

The applicant married a United States citizen in Colombia in March 1997 and is the beneficiary of an approved petition for alien relative. The applicant seeks a waiver of the permanent bar under §§ 212(i) and 212(a)(9)(A)(iii) of the Act, 8 U.S.C. 1182(i) and 1182(a)(9)(A)(iii), to rejoin her spouse in the United States.

The officer in charge denied the application for failure of the applicant to demonstrate that extreme hardship would be imposed on her husband.

On appeal, counsel states that the decision is incorrect and argues that the separation of the applicant from her husband is akin to banishment.

Issues of inadmissibility are to be determined by the consular officer when an alien applies for a visa abroad. This proceeding must be limited to the issue of whether or not the applicant meets the statutory and discretionary requirements necessary for the inadmissibility ground to be waived. 22 C.F.R. 42.81 contains the necessary procedures for overcoming the refusal of an immigrant visa by a consular officer.

The consular officer's report of refusal dated April 6, 1998 indicates that the applicant needs an approved Form I-212 and a waiver of grounds of inadmissibility in order to be reconsidered. The consular officer refers to the applicant's deportation in June 1996 and the Service refers to the applicant's exclusion in October 1996. Additionally, a second Service file suggests that the applicant was ordered deported in 1990 and she has not shown in the record that she remained abroad for the required amount of time.

Service instructions at O.I. 212.7 specify that a Form I-212 application will be adjudicated <u>first</u> when an alien requires both permission to reapply for admission and a waiver of grounds of inadmissibility. If the Form I-212 application is denied, then the Application for Waiver of Grounds of Inadmissibility (Form I-601) should be rejected, and the fee refunded.

The operations instruction also provides that after receipt by a Service office, if grounds of inadmissibility other than those for which the waiver is sought are discovered, the application and all relating documents should be returned to the consular officer for reconsideration. This would also apply if certain grounds of inadmissibility are not applicable.

The present record does not contain evidence that the applicant has remained outside the United States for 5 consecutive years since the date of her 1990 deportation or removal as required by 8 C.F.R. 212.2(a), or since her June 1996 deportation referenced by the Consular officer (which became 10 years due to the amendments to the Act by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA)), or for her October 1996 exclusion as referenced by the Service (which became 5 years due to the IIRIRA amendments) or that she was granted permission to reapply for admission to the United States. The record indicates that a Form I-212 application is being processed.

Therefore, since there is no evidence that the Form I-212 application has been adjudicated first and approved in this instance, the appeal of the officer in charge's decision denying the Form I-601 application will be rejected, and the record remanded so that the officer in charge may adjudicate the Form I-212 application first, or provide evidence for the record that a decision has already been made on the Form I-212.

If the officer in charge approves the Form I-212 application or provides evidence that such application has been approved, he shall certify the record of proceeding to the Associate Commissioner for review and consideration of the appeal regarding the Form I-601 application. However, if he denies the Form I-212 application or provides evidence that such application has been denied, he shall certify that decision to the Associate Commissioner for review, reject the Form I-601 application, and refund the fee.

ORDER: The appeal is rejected. The decision of the officer in charge is withdrawn. The matter is remanded for further action consistent with the foregoing discussion.